

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH ODILON GARZA,

Defendant-Appellee.

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UNPUBLISHED

June 12, 2007

No. 270146

Wayne Circuit Court

LC No. 06-002107-01

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

The prosecution appeals as of right from a circuit court order granting defendant's motion to suppress evidence seized during a search of defendant's residence. The court concluded that the affidavit supporting the search warrant failed to establish probable cause for a search and that the good-faith exception to the exclusionary rule did not apply. Because we conclude that the warrant was supported by probable cause, we reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The affidavit stated that the affiant, a Southgate police officer assigned to the Michigan State Police Downriver Area Narcotics Organization, "received information from the Southgate Police Department reference to narcotics trafficking at 13201 Catalpa, Southgate, MI 48195." The affidavit did not further elaborate on the source or the information. The affidavit also reported the discovery of marijuana in two trash pulls from the address in successive weeks, January 24 and 31, 2006. On January 24, 2006, two plastic trash bags were removed from in front of the home and ".7 gms w/pkg of marijuana" was discovered. In the second pull, on January 31, 2006, one plastic trash bag was removed from in front of the address and "1.3 gms w/pkg of marijuana" was found. In both instances, residency, i.e., mail bearing the address, was also found in the trash bag.

The trial court concluded that the affidavit was "woefully insufficient" and that the information concerning the tip did not satisfy MCL 780.653(b).<sup>1</sup> The court determined that a

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<sup>1</sup> MCL 780.653(b) allows an affidavit submitted in support of a request for a search warrant to be based on information supplied by an unnamed person if the affidavit includes affirmative allegations from which the magistrate may conclude that the person spoke with personal  
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reasonably cautious person could not have concluded that there was a substantial basis for a finding of probable cause. The court also rejected the good-faith exception to the exclusionary rule because it did not believe that the police acted in objectively reasonable reliance on the search warrant.

In *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006), this Court summarized the applicable standard of review as follows:

“[A]ppellate scrutiny of a magistrate’s decision involves neither de novo review nor application of an abuse of discretion standard.” *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Instead, this Court need only ask “whether a reasonably cautious person could have concluded that there was a ‘substantial basis’ for the finding of probable cause.” *Id.* Because of the strong preference for searches conducted pursuant to a search warrant, a magistrate’s decision regarding probable cause should be paid great deference. *Id.* at 604, citing *Illinois v Gates*, 462 US 213, 236-237; 103 S Ct 2317; 76 L Ed 2d 527 (1983). “Affording deference to the magistrate’s decision simply requires that reviewing courts ensure that there is a substantial basis for the magistrate’s conclusion that there is a ‘fair probability that contraband or evidence of a crime will be found in a particular place.’” *Russo, supra* at 604, quoting *Gates, supra* at 238. Finally, this Court reviews a trial court’s factual findings in a ruling on a motion to suppress for clear error, *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005), but reviews de novo a trial court’s interpretation of the law or the application of a constitutional standard to uncontested facts, *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

In *People v Keller*, 270 Mich App 446, 450; 716 NW2d 311 (2006), lv pending, this Court concluded that an anonymous tip and the discovery of marijuana in a single trash pull were inadequate for a reasonably cautious person to conclude that there was “a ‘substantial basis’ for the finding of probable cause, i.e., for inferring a ‘fair probability’ that evidence of drug trafficking would be found at defendants’ house.” *Id.*, p 450. The affidavit supporting the warrant referred to an anonymous tip purportedly received by the affiant, a police officer, that large quantities of marijuana were being sold and manufactured out of the defendant’s home. The tip did not include any “supportive or descriptive information.” The affidavit also indicated that a marijuana cigarette butt (“a roach”) and “possibly a small amount of marijuana residue in a pizza box” were discovered in a trash pull. This Court concluded that the tip did not meet the requirements of MCL 780.653(b), but recognized that the statutory violation itself did not require application of the exclusionary rule. *Keller, supra* at 459. After noting that the reference in the tip to large quantities of marijuana being sold and manufactured out of the house “is at significant odds with the uncovered evidence,” the Court further concluded that the assertions concerning the tip and the evidence from the trash pull “do not provide a ‘substantial basis’ for inferring a fair probability that evidence of drug trafficking would be found at defendant’s house.” *Id.*, p 450.

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knowledge and is credible or that the information is reliable.

The present case is factually distinguishable from *Keller* because here the marijuana was discovered in two trash pulls, on consecutive weeks. We find persuasive the following reasoning in *State v Gross*, 833 So 2d 777, 781 (Fla App, 2002):

[W]hen the first garbage search turned up a small amount of marijuana seeds, that was not enough to establish probable cause for a search warrant. That is because the small amount of marijuana remains suggested only that the household occupants had once possessed marijuana but had used it up. However, when marijuana seeds showed up twice within a month, this allowed the inference that the occupants possessed marijuana on a regular basis, thus creating “a continuing violation of the drug laws. . . .” That being so, there was “a ‘fair probability’ that marijuana or cannabis would be found in the house.” *Id.* Thus, probable cause existed for the issuance of the search warrant. [Citation omitted].]

In the present case, the assertions in the affidavit concerning the discovery of marijuana in two consecutive trash pulls provided a substantial basis for the magistrate’s conclusion that there was a fair probability that contraband or evidence of a crime would be found at the specified address. *Martin, supra* at 297. Therefore, the trial court’s order suppressing the evidence is reversed.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O’Connell